***THE HONOURABLE SRI JUSTICE V.V.S.RAO**

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+WRIT PETITION No.658 of 2007

% 30-04-2007

Smt.Mellimi Lakshmikantam.

...Petitioner

AND

$ The Election Tribunal-cum-Principal District Judge, West Godavari at Eluru, and others.

...Respondents

! COUNSEL FOR PETITIONER: Sri M.V.Durga Prasad.

^ COUNSEL FOR RESPONDENTS: G.P for Panchayat Raj,

Sri M.Prabhakar Rao and

Sri Kodanda Ram.

<GIST

>HEAD NOTE:

? CASES REFERRED:

1 (2003) 8 SCC 134
2 2005 (1) ALT 426
3 2005 (1) ALT 673
4 2007 (1) ALD 779

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THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.658 of 2007

30.4.2007

Between:

Smt.Mellimi Lakshmikantam, W/o.Suryarao

… Petitioner

AND

The Election Tribunal-cum-Principal District Judge,
West Godavari at Eluru

And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.658 of 2007

ORDER:

This writ petition is filed seeking a writ of Prohibition restraining first respondent, namely, Court of Principal District Judge, West Godavari District at Eluru, from proceeding with O.P.No.799 of 2006.

Election to the office of Sarpanch, Kanuru Gram Panchayat of Peravali Mandal in West Godavari District, was held on 02.8.2006. Petitioner and respondents 2 and 3 herein contested the election. Petitioner was declared elected having polled 2081 votes. On 18.8.2006, second respondent filed E.O.P.No.799 of 2006 on the file of first respondent under Sections 233, 19(3) and 22(1) of Andhra Pradesh Panchayat Raj Act, 1994 (the Act, for brevity) read with Rule 2(i)(a) and 4(ii) of Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (the Rules, for brevity). Second respondent prayed to declare the election of petitioner herein as void and to declare her (second respondent) as elected having polled next highest number of votes. As an alternative, a direction to conduct fresh elections to office of Sarpanch was also sought.

After receiving the notice, petitioner herein filed I.A.No.3674 of 2006 to reject the election petition as being without jurisdiction. The same was dismissed on 04.1.2007. First respondent having noticed that the affidavit in lieu of chief examination of P.W.1 has already been filed, adjourned the matter for cross-examination. At that stage, petitioner filed the present writ petition on 05.1.2007. It is mainly contended that the election petition filed by second respondent herein cannot come within the scope of Section 22 of the Act and, therefore, the conclusion arrived at by the first respondent while passing orders on 04.1.2007 that it falls under Section 22 of the Act is erroneous. It is also the contention of the petitioner that as per the Rules, election of a sarpanch or ward member of Gram Panchayat can only be assailed before the duly constituted Election Tribunal-cum-Junior Civil Judge.

This Court while ordering notice before admission passed orders staying all further proceedings in O.P.No.799 of 2009 for a period of two weeks. When the matter was listed for admission, interim stay was extended by this Court on three occasions and ultimately the matter was heard finally on 24.4.2007, as the respondents 2 and 5 filed counter affidavits. Fifth respondent, viz., District Panchayat Officer, has taken a stand in the counter that the election O.P., before first

respondent is not maintainable and that second respondent has to necessarily pursue the remedy as provided under Section 22 of the Act.

The second respondent in her counter affidavit states that petitioner has four children on the date of election notification, that she contested the election suppressing this fact and that she incurs disqualification under Section 19(3) of the Act. Therefore, second respondent filed petition before the executive authority/Secretary of Gram Panchayat – sixth respondent herein; under Section 22(1) of the Act. No action was taken, and therefore, she filed the petition under Section 22(1) before first respondent read with Section 233 and 19(3) of the Act. There is no bar for such petition. When the petitioner filed I.A.No.3674 of 2006, the same was dismissed by first respondent considering all aspects of the matter and that under Section 22 of the Act, it is only the District Judge who has to decide the questions of disqualification.

While making oral submissions, learned counsel for petitioner, learned Assistant Government Pleader for Panchayat Raj and learned counsel for second respondent stick to their position in the pleadings.

In the background facts and submissions made, question that falls for consideration is whether first respondent inherently lacks jurisdiction to entertain the O.P., as laid by second respondent.

A writ of prohibition is not a right nor it is granted *ex debito justitiae.* Inferior Tribunal or public authority must be shown to suffer from inherent lack of jurisdiction. A writ of prohibition cannot be granted except in a clear case of want of jurisdiction. It does not lie for grievances, which can be redressed in the ordinary course of judicial proceedings. The writ has to be used with great caution and forbearance for furtherance of justice and it cannot be issued in every case of doubtful jurisdiction. If the jurisdictional facts need enquiry as a primary step, the same cannot be a ground to surmise inherent lack of jurisdiction. In such a case, the aggrieved should raise all questions of jurisdiction before the same public authority, which is seized of the matter. In **Thirumala Tirupati Devasthanams v Thallapaka Ananthacharyulu**[1] explaining the scope of prohibition, Supreme Court laid down as under.

> A writ of prohibition is normally issued only when the inferior court or tribunal (*a*) proceeds to act without or in excess of jurisdiction, (*b*) proceeds to act in violation of the rules of natural justice, (*c*) proceeds to act under law which is itself ultra vires or unconstitutional, or (*d*) proceeds to act in contravention of fundamental rights. The principles, which govern the exercise of such power, must be strictly observed. **A writ of prohibition must be issued only in rarest of rare cases. Judicial discipline of the highest order has to be exercised whilst issuing such writs. It must be**

remembered that the writ jurisdiction is original jurisdiction distinct from appellate jurisdiction. An appeal cannot be allowed to be disguised in the form of a writ. In other words, this power cannot be allowed to be used "as a cloak of an appeal in disguise". Lax use of such a power would impair the dignity and integrity of the subordinate court and could also lead to chaotic consequences.

(emphasis supplied)

Whether there is a bar in the Act or the Rules for first respondent to entertain the O.P., filed by second respondent? Under Article 243-O of Constitution of India and Section 233 of the Act, an election to any Panchayats can be called in question by filing election petition before the prescribed authority in accordance with the Rules made in that behalf. For that purpose, Election Tribunals Rules have been made.

Rules 3 to 7 of the Rules deal with procedure for presenting election petitions and the requirements to be complied with. Rules 8 to 15 deal with powers of Election Tribunal and method and manner of dealing with election petitions. Rule 12 of the Rules enumerates the grounds on which an election of a candidate can be declared as void and/or declaring such candidate as disqualified to contest any election under the Act for a period of six years from the date of the order. This Rule reads as under.

12. If in the opinion to the Election Tribunal,

(a) That on the date of his election, a Returned Candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Act, or

(b) That any corrupt practice as laid down under Section 211 of the Act has been committed by a Returned Candidate or his election agent or by any other person with consent of the Returned Candidate or his election agent, or

(c) That any nomination has been improperly rejected, or

(d) That the result of the election, insofar as it concerns a Returned Candidate has been materially affected.

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice, committed in the interest of the Returned Candidate by an Agent other than his election agent, with the connivance of the Returned Candidate, or

(iii) by the improper reception, refusal or rejection of any vote, or the reception of any vote which is void,

(iv) by any non compliance with the provisions of the Act, or any Rules or Orders made under the Act

(A) the Election Tribunal shall declare the election of the Returned Candidate to be void.

(B) If the Election Tribunal holds the

> Returned Candidate guilty under clause (b) and clause (d)(ii) of this Rule, the Election Tribunal shall in addition to declare the election of the Returned Candidate as void, shall also declare that the returned candidates shall be disqualified to contest in any elections under this Act, for a period of six years from the date of the order.

A reading of Rule 12 of the Rules would show that an election to any office in Panchayat set up can be challenged on the following grounds: (i) the elected candidate is not qualified or was disqualified; (ii) the elected candidate committed corrupt practice as laid down under Section 211 of the Act; (iii) a nomination has been improperly rejected; (iv) a nomination was improperly accepted; (v) a person other than election agent committed corrupt practice with the connivance of the elected candidate; (vi) there was improper reception, refusal or rejection of any vote or (vii) reception of vote which is void and (viii) there was non-compliance with the provisions of the Act, Rules and/or Orders made under the Act. Be it also noted, in the case of grounds (v) and (vi) election cannot be set aside or declared void unless it is proved that by reason of such grounds, the election of the returned candidate has been materially affected.

It is needless to mention that a challenge to an election has to be strictly in accordance with the Rules. So to say, election can be set aside by duly constituted Tribunal only on the ground and only after following the procedure found in the Act and the Rules and no other ground or no other procedure can be read into the Rules. Rule 3 of the Rules prescribes that an election petition shall be presented within thirty days from the date of declaration of result of election. The election Tribunal has no power to entertain petition submitted after a period of prescribed limitation. In case elected/returned candidate was suffering from disqualifications at the time of election or became disqualified subsequently, what is the remedy for a voter or for any person aggrieved by a situation where a disqualified person occupied a public office. Section 22(1) of the Act takes care of such a situation. The same reads as under.

> **22. Authority to decide questions of disqualification of members:-** (1) Where an allegation is made that any person who is elected as a member of a gram panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19 or Section 20 by any voter or authority to the executive authority in writing and the executive authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether, or not he has become disqualified under any of those sections, such member or any other

> member may, and the executive authority, at the direction of the gram panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, apply to the District Court having jurisdiction over the area in which office of the gram panchayat is situated for decision.

A reading of Section 22(1) of the Act shows that when a member of Gram Panchayat[2] becomes disqualified under Sections 17, 18, 19 and 20 of the Act or said elected member is not qualified for the Office, any voter or authority can give a complaint to executive authority in writing, and then latter after enquiry has to give intimation to member. In case of any doubt that an elected member has become disqualified or is not qualified, the voter, the aggrieved person or member or the Commissioner can apply to the District Court for a decision on the question whether a member is not qualified or has become disqualified. Thus, Section 22 of the Act operates altogether in different situation. Insofar as disqualifications, at the time of election, in the case of lack of qualification or disqualification at the time of elections, it is no doubt true that there is some overlapping of grounds mentioned in Rule 12 of the Rules. In case an election petition is not filed in thirty days, the elected candidate who is not having qualification or disqualified subsequently would certainly continue to hold public office without proper legal sanction. The Legislature was aware of this situation and intentionally chose to enact Section 22 of the Act. Having regard to the fact that the institution of Panchayat Raj is now constitutionally recognized by reason of part IX of Constitution, the concurrent jurisdiction conferred on the District Court and the respective election Tribunals as enumerated in sub-rule (2) of Rule 2 of the Rules is understandable. Merely because, an election dispute has been raised before the election Tribunal-cum-Junior Civil Judge in a case of Gram Panchayat does not mean that District Court is totally divested of any jurisdiction in such matters.

In this case, the first respondent filed a petition before the executive authority of Gram Panchayat under Section 22(1) of the Act and when no action was taken, she filed election O.P., before the District Court. There is no bar in directly filing such a petition before the District Court when inaction on the part of the Executive Officer is complained, which itself may be an issue before the District Court. In a given case, the District Court might even reject such O.P., on the ground that petitioner therein has to go through the procedure contemplated under Section 22 of the Act. The same does not however, lead to an inference that the District Court suffers from inherent lack of jurisdiction. This view is also supported by decisions of this Court in **N.Tirupataiah v District Panchayat Officer**[3],

Sarihaddu Ramya v Gudiwada Rural Mandal Parishad[4] and **M.Jagannadha Rao v Government of A.P.**[5].

In **Tirupataiah** (supra), analyzing Section 22(1) of the Act, this Court explained as under.

> An analysis of above provision would show that (i) any voter or authority may make allegation in writing that a member or a sarpanch of Gram Panchayat is not qualified under Sections 17 to 20 of the Act; (ii) such an allegation in writing has to be made to the executive authority, which according to Section 2(12) means the Panchayat Secretary appointed to each Gram Panchayat;
> (iii) on receipt of such complaint in writing, the executive authority has to inform the District Panchayat Officer, who in turn will send an intimation to the member or sarpanch, who allegedly incurred the disqualification; (iv) on receipt of such intimation, if there is any dispute as to disqualification alleged, such member or any other member of the Gram Panchayat, or Panchayat Secretary or the Commissioner are entitled to apply to the District Court for a decision as to whether a member or sarpanch incurred disqualification and (v) such application to the District Court has to be made within a period of two months from the date on which such intimation is given or doubt is entertained. … A plain reading would suggest that the complainant is not given any liberty to move an application to the District Court. Only four categories of persons or agencies, namely, (a) the member, who received the intimation; (b) any other member; (c) the panchayat secretary (executive authority) on a direction of the Gram Panchayat and (d) the Commissioner of Panchayat, are entitled to apply to the District Court for a decision. When the whole exercise is initiated at the instance of a "person" i.e., any resident of Panchayat, can it be said that the legislature purportedly intended to deny an opportunity to complainant to approach the District Court when none of the four categories of persons fails to initiate action before the Court?

In **Sarihaddu Ramya** (supra), it was laid down as under.

> Section 22 of the Act and the Rules for election disputes made under G.O.Ms.No.111, dated 3-3-1995 in exercise of powers under Section 233 of the Act are intended to govern two different situations. Moreover, as noted above, whereas the forum specified for determination under Section 22 of the Act is the District Court, under the Rules the Election Tribunal as defined under Rule 2(2) alone is competent to adjudicate the election disputes. The scope and object of the said two provisions as well as the procedure prescribed for invoking the two remedies provided thereunder are also entirely different. In the circumstances, even assuming that the petition in question was presented for adjudication under Section 22 of the Act, undoubtedly the same cannot be maintained by the Election Tribunal constituted under Rule 2 of the Rules made under G.O.Ms.No.111, dated 3-3-1995. … It is true that the words "District Court" in Section 22 of the Act were substituted for the words "District Munsif" under the A.P.Panchayat Raj (Amendment) Act 22 of 2002 and thus by the date of the presentation of O.P.No.83 of 2001 on 31.08.2001 the District Munsif was competent to adjudicate upon the disqualification under Section 22 of the Act. The District Munsif has been defined under

Section 2(10) of the Act as the District Munsif appointed under the A.P.Civil Courts Act, 1972 and subsequently by virtue of amendment to A.P.Civil Courts Act, under Act 29 of 1997 the District Munsif has been redesignated as Junior Civil Judge. Thus, even prior to the amendment, it was the Junior Civil Judge having jurisdiction over the area in which the office of the Mandal Parishad is situated who was conferred with the power to adjudicate upon the alleged disqualification under Section 22 of the Act. Hence, under no circumstances the Court of Senior Civil Judge which was constituted as the Election Tribunal under Rule 2 of the Rules before whom the petition in question was presented by the third respondent can be held to be competent to adjudicate upon the alleged disqualification under Section 22 of the Act.

In **M.Jagannadha Rao** (supra), the above legal position was reiterated and this Court laid down that even after filing election petition under Section 233 of the Act, another application under Section 22 of the Act is not barred. The relevant observations are as under.

> On a careful scrutiny of Section 22 and 233 of the Act, this Court is of the considered opinion that these provisions virtually operate in different fields and the scope and ambit also appear to be different. It cannot be said that the remedy by way of Election Petition always can be equated with the remedy under Section 22 of the Act. It is needless to say that the grounds which were raised and to be adjudicated on judicial side in Election Petition may be different grounds and the grounds which may be available in relation to disqualifications to be adjudged under Section 22 of the Act may be of limited nature which may have to be decided by the concerned authorities in accordance with the procedure under Section 22 of the Act. Be that as it may, the remedies available in relation to disqualification under Section 22 of the Act by authorities and by way of Election Petition under Section 233 of the Act, these are simultaneous remedies and merely because a party invokes the jurisdiction of Election Tribunal by filing Election Petition, unless there is specific prohibition, it cannot be said that such party cannot pursue the remedy under Section 22 of the Act. If such interpretation to be adopted it would amount to doing violence to the spirit of the legislation in introducing such remedies by indicating separate specific provisions viz., Section 22 of the Act and Section 233 of the Act. Hence, these two provisions and the exercise of powers in relation to the respective aspects, operate definitely in different fields at least upto some extent and may be that certain grounds may be overlapping.

The conspectus of the above three decisions is that whether or not an election petition is preferred under Section 233 of the Act, the voter, an unsuccessful candidate, the executive authority or the Commissioner of Panchayat are entitled to apply to the District Court for a decision as to the returned candidate was not qualified at the time of election, or incurred disqualification subsequently. In a given case, simultaneously both the remedies can also be pursued depending on the facts and circumstances of the case. For instance, if the election

petition is filed on one ground and subsequently, the elected candidate incurs disqualification under Sections 17 to 20 of the Act, any application under Section 22 of the Act can be presented before the District Court. Therefore, this Court holds that first respondent does not suffer from any inherent lack of jurisdiction, and therefore, election O.P., is maintainable notwithstanding the fact that the second respondent purportedly filed petition under Section 233 of the Act read with the Rules. The mention of wrong provision would not disentitle the remedy under Section 22 of the Act.

The writ petition, for the above reasons, is devoid of any merit and is accordingly dismissed with costs.

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(**V.V.S.RAO, J**)

30.04.2007.
Pln

Note: LR copy be marked.
(By order)
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[1] (2003) 8 SCC 134

[2] As per Section 156(2) of the Act, Section 22 is also applicable in the case of member of Mandal Parishad and as per section 184(2) of the Act, Section 22 is also applicable in the case of member of a Zilla Parishad.

[3] 2005 (1) ALT 426

[4] 2005 (1) ALT 673

[5] 2007 (1) ALD 779